

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of: Mark Falahee

Application No.: 10/805,856

Confirmation No.: 1720

Filed: March 22, 2004

Art Unit: 3734

For: WOUND AND SKIN CLOSURE
INSTRUMENT AND METHOD OF USE

Examiner: L. Bachman

APPELLANT'S REPLY BRIEF TO EXAMINER'S ANSWER

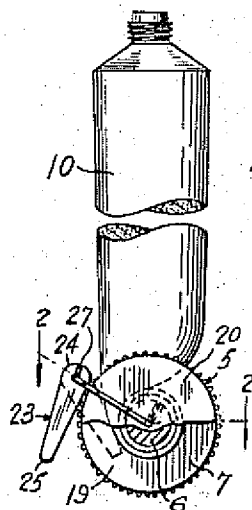
Mail Stop Appeal Brief
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

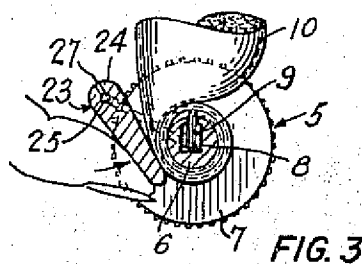
In response to the Examiner's Answer mailed March 3, 2009, Appellant hereby submits its Reply Brief.

Appellant is fully aware that an Examiner is entitled to give the claims of a patent application their broadest, reasonable interpretation. In this case, however, the Examiner's interpretation is overly broad and entirely unreasonable.

All of the pending claims stand rejected under 35 U.S.C 103(a) over Petersen in view of Sundstrom. Petersen resides in a tube squeezer, shown below:

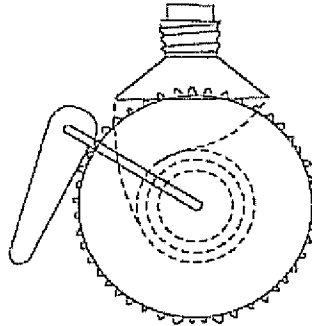


In the operation of Petersen, one end cap 7 is removed from the tube squeezer and the pinched and sealed end 9 of a collapsible tube 10 is slid laterally into the axial recess 8 of the cylindrical body 6. The end cap is then replaced. When it is desired to expel a portion of the contents of the tube 10 the press lever 23 is held against the tube by finger pressure in the manner shown in FIGURE 3 (below) and additional pressure is exerted to rotate the tube squeezer with respect to the tube 10 so that the contents at the bottom of the tube are pressed upwards (*i.e., away from the end caps 7*) as the walls of the tube are collapsed against each other and wrapped about the cylindrical body 6. ('823 patent, 2: 56-67).



The Examiner says the device of Petersen can be oriented such that wheels are pulled along the skin and the opening in the tubes trails behind the wheels to supply glue (instead of toothpaste, for example).” Or, the Petersen device can be oriented so that the wheels are pulled along the skin such that the opening in the tube is in front of the wheels to supply glue to an [sic] wound before the wheels pass over it.” (Examiner’s Answer, middle of page 4). These arguments make no sense from any practical standpoint. Even if the tube squeezer of Peterson could somehow be contorted to assume the arrangements suggested by the Examiner, the question remains: *Why?* Would a person of skill in the art—any art—appreciate that the tube squeezer could be used in a bizarre configuration to apply skin glue to a wound as it is being closed? Of course not.

The Examiner goes on to argue that “if the tube in Peterson were almost empty, the opening in the tube would be closer to, if not on top, of the of the wheels.” So illustrate this, Appellant has attempted to draw the situation, below:



As the Board will see, as the tube gets shorter, the more certain the tube will be pointing away from the “wheels.” Even if the tube could be forced toward the “wheels,” the shaft between the wheels would preclude the Examiner’s suggestion.

The Examiner’s new argument that “the outer faces of the wheels could be considered to constitute additional structure” is even more unreasonable. (Examiner’s Answer, middle of page 5). Who would consider this? Certainly not a person of ordinary skill in the art. The Examiner’s additional arguments serve only to support Appellant’s position. While the spokes of a wheel could—and should—be considered “other things,” the surface of an article *is part of the same article*—not “something else.”

With regard to Appellant’s recitation of “skin glue,” Appellant continues to insist that those of skill in the art of medicine would limit this to certain formulations. Nevertheless, it should be clear what skin glue isn’t—it’s not toothpaste or substances which would not be biocompatible.

In conclusion, for the arguments of record and the reasons set forth above, all pending claims of the subject application continue to be in condition for allowance and Appellant seeks the Board’s concurrence at this time.

Respectfully submitted,

By: _____

Date: May 4, 2009

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